IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WA.No. 1681 of 2000(D)

AGAINST THE JUDGEMENT IN OP.17487/2000 Dated 22/06/2000
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APPELLANT: PETITIONER IN O.P.

M. THOMAS S/o ANTONY, DUFFADAR,
KERALA AGRICULTURAL INCOME TAX AND
SALES TAX APPELLATE TRIBUNAL,
ADDITIONAL BENCH, KOZHIKODE

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:RESPONDENTS IN O.P.
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1. THE DEPUTY COMMISSIONER,
   AGRICULTURAL INCOME TAX AND SALES TAX,
   KOZHIKODE
2. THE COMMISSIONER FOR TAXES,
   THIRUVANANTHAPURAM
3. STATE OF KERALA REPRESENTED BY THE
   FINANCIAL SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM

BY GOVT PLEADER SRI BENNY GERVASIZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 07/06/2007, THE COURT ON 18/06/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 1681 of 2000

Dated: 18th June 2007

JUDGMENT

Radhakrishnan, J.

Appellant has sought for a declaration that since he was a last grade employee as on 7.4.1970 he is entitled to get the benefit of Rule 60 (b) of Part I Kerala Service Rules and therefore was entitled to continue upto the age of 60 years. Appellant was admittedly working as a provisional employee on 7.4.1970. A Full Bench of this court in W.A. No 1681 of 2000 and other connected cases took the view that for claiming the benefit of Rule 60 (b) Part I K.S.R it is not necessary that an employees in last grade service should have been in permanent or regular service as on 7.4.1970 and the benefit would be available to a provisional employee as well if he was in service on 7.4.1970. The question that is posed for consideration in this case is whether the benefit of Rule 60 (b) of Part I K.S.R is available to a provional employee if there is break in service subsequent to 7.4.1970.

2. The fact that the appellant was working as a provisional employee as on 7.4.1970 is not disputed. Facts would indicate that he was provisional employee from 2.5.1969 to 5.5.1972. Later there was a break in service from 5.5.1972 to 1.3.1973 and from 1.6.1973 to 5.8.1973 which period of service was not regularised. Appellant was Peon in the Agricultural Department and he left the Department on 5.5.1972. Later he entered regular service in the Sales Tax Department only on 6.8.1973. The question arose as to whether he is entitled to continue beyond 55 years of age in terms of Rule 60 (b) of Part I K.S.R. Even though he approached the authorities requesting regularisation of service for the period from 5.5.1972 to 1.3.1973 and from 1.6.1973 to 5.8.1973 on the strength of Ext. P2 government letter. Request was turned down by the authorities holding that he is not entitled to get the benefit of Ext P2 letter since he had left the Agricultural Department voluntarily on 5.5.1972. Later he got regular service only from 6.8.1973 which is in the Sales Tax Department. Since the break in service was not regularised he did not have continuous service as last grade employee from 7.4.1970.

3. Identical question arose before the learned single judge of this court in Rabecca v. State of Kerala (1994 (1) KLT 552) wherein

the court took the view that in order to get the benefit of Rule 60 (b) of Part I K.S.R an employee must be in service on 7.4.1970 either provisionally or permanently and he should also establish that he has continuous service from that date. Appellant submitted that he should be given the benefit extended to Radhakrishnan whose service was regularised. The reason for regularisation of the service of Radhakrishnan has been explained in the counter affidavit and the same cannot be extended to the appellant since he left the Agricultural Department voluntarily on 5.5.1972. Further appellant has already retired from service on attaining the age of 55 years. In such circumstances, this appeal lacks merits and the same would stand dismissed.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-

ANTONY DOMINIC
Judge

18/06/2007
en/

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